

# Exhibit 66

1                               IN THE UNITED STATES DISTRICT COURT

2                               FOR THE WESTERN DISTRICT OF NORTH CAROLINA

3                               ASHEVILLE DIVISION

4                               \_\_\_\_\_

5       CARYN DEVINS STRICKLAND,                )

6                               Plaintiff,                )

7    )

8       -vs-                                )       Case No. 1:20-cv-00066

9    )

10       UNITED STATES, et al.,                )

11                               Defendants.                )

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13

14 \*\*\* CONFIDENTIAL \*\*\*

15 SUBJECT TO PROTECTIVE ORDER

16 ECF NO. 183

17

18 DEPOSITION OF THE HONORABLE ROGER L. GREGORY

19 10:02 a.m. to 10:54 a.m.

20 May 16, 2023

21 Richmond, Virginia

24	Job No. 49825
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25 | REPORTED BY: Julia A. Bammel, RPR, CSR

1 for disqualification dated February 24th, 2019?

2 A Yes.

3 Q Did you ever provide a decision to the  
4 plaintiff with that ruling?

5 A A decision? The decision, yes, to deny it.

6 Q How was that communicated to --

7 A Through James Ishida, to him for  
8 Ms. Strickland.

9 Q Were there any written orders memorializing  
10 your decision regarding disqualification?

11 A No.

12 Q Why did you not issue a written order regarding  
13 your decision?

14 A It wasn't necessary, nor required.

15 Q All right. What were your --

16 A In particular, the confidential was, as I  
17 recall, paramount to counsel, so the less you have, the  
18 better there.

19 Q Okay. So it was confidential --

20 A Confidentiality. You know, he told her that he  
21 was under strict confidentiality. So was I. So that's why  
22 I said, it was not required or necessary.

23 Q All right. What were your reasons for denying  
24 Plaintiff's disqualification request?

25 A Huh. Well, that's a long answer, I suppose.

1 There are several. First of all, the EDR plan says clearly  
2 that the employee shall -- mandatory language -- shall put  
3 forth all facts in support of the disqualification. So the  
4 short answer is that there were no facts submitted or  
5 proffered that would warrant disqualification of Tony  
6 Martinez.

7 And it was -- I had to take this as a universal  
8 disqualification since it didn't say which area of it. So  
9 I took it by pieces. There's the EDR, and then there's the  
10 counseling, then, if necessary, a full hearing, and, if  
11 necessary, an actual review by the Judicial Counsel.

12 It seemed to me that the only grounds that was  
13 stated in the letter was the fact that he is a violator or  
14 somebody who's -- I'm accusing of something, but that  
15 almost is always the case because the appointing  
16 authority -- there wouldn't be a dispute if they didn't  
17 disagree with something; otherwise, they wouldn't be there.

18 So that's garden-variety, and that person --  
19 that party is never neutral because they're defending,  
20 obviously, the unit or the appointing authority in it, so  
21 that's not enough. So I saw nothing in terms of -- of  
22 course, first was the question of whether or not he handled  
23 the EDR. He did not. James Ishida was handling the EDR.

24 Would he be dealing with counseling? He would  
25 not be. The counseling -- "he," meaning Tony Martinez,

1 would not be. If it went to mediation, he would not be  
2 handling the mediation.

3 Another question about, "Well, I don't want him  
4 investigating," well, I had my own investigation  
5 independent of him. He wasn't the investigator. He would  
6 be a witness.

7 So all of those reasons. To disqualify the  
8 appointing authority is an unusual -- or rare. Yes, I  
9 understood I had the authority to disqualify him. No  
10 question about that. I do. But in looking at it, you look  
11 at the whole context of it.

12 And based on her letter -- I'm sorry --  
13 Ms. Strickland's letter on September 10, in terms of saying  
14 what her grievance was, it's clearly -- in the documents,  
15 it clearly said that she and Mr. Martinez were engaged in  
16 negotiating at that point. Not that she agreed with that,  
17 no meeting of the minds, but they were.

18 So there was no allegation that he was  
19 stonewalling, would not meet with her, would not negotiate.  
20 There was nothing that he would be a mediator, nothing that  
21 he would have any fact-finding or be involved in the  
22 investigation or those things. Those are the kinds of  
23 things you would look for if there was a situation. None  
24 of them were there.

25 That's why, based on what -- as was required,

1 you shall put forth the facts, because that's what I'm  
2 looking at. I'm not making a merit decision. I'm looking  
3 at the facts you proffered, and the proffered facts did not  
4 justify disqualification.

5 Q All right. Have you ever been presented a  
6 disqualification request before in EDR?

7 A Have I? No, I have not.

8 Q Is there -- and, again, I know this can be  
9 somewhat repetitive. Is there anything else you'd like to  
10 add regarding the basis for your decision?

11 A Well, of course, I gave you the interrogatory  
12 in this case, so to the extent I have excluded something  
13 there, I would incorporate it by reference as well. But  
14 it's -- at this point, I think that seems to be most of it  
15 in terms of -- because the facts were so -- presented were  
16 very few, and it basically all dealt with the fact that  
17 he's a violator, and, therefore -- and another thing too.

18 It suggested, I think -- suggested that "I  
19 don't want to be made to sit down and negotiate with him,"  
20 but the rules clearly say you don't have to do any  
21 face-to-face counseling. It's and/or. You don't have to  
22 meet with anyone in terms of what -- face someone. It  
23 could be meeting -- a counselor can meet with, and together  
24 or separately.

25 So even those things -- so I saw nothing -- I

1 probably shouldn't say nothing, but I saw nothing that  
2 warranted disqualification.

3 Q Okay. And just to clarify on that point, you  
4 would agree that counseling and mediation were required  
5 phases of EDR at that time?

6 A Were required? No. I don't think it was  
7 necessarily required. No. You could -- you could be  
8 finished with EDR, and you could go straight -- you know,  
9 it's EDR. I mean, EDR counseling could be the end of it  
10 and never get to mediation.

11 Q So you could -- if you were a complainant, you  
12 could skip counseling and mediation and just go straight to  
13 a final hearing?

14 A No. No. No. I'm not saying that. No.

15 Q All right. And so as far as -- just to clarify  
16 what you were just talking about, you made it more in the  
17 sense of like communications could occur over phone in  
18 order to perform counseling or mediation. They wouldn't  
19 necessarily have -- the parties wouldn't necessarily have  
20 to be in the same room?

21 A They wouldn't have to be on the phone at the  
22 same time either. You talk to one side, what they want,  
23 and I think -- it seemed like they were -- was engaged in  
24 that, by her letter, already. Not that they came to a  
25 meeting of minds. That's why we had -- the actual EDR was